



1        APPEARANCES:        (CONT'D.)

2 CHARLES DAVIS  
BROWN, HAY & STEPHENS  
3 205 S. Fifth  
Suite 700  
4 Springfield, Illinois 62701

5 (Appearing on behalf of  
AmerenIP.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

I N D E X

WITNESSES

DIRECT

CROSS

None

EXHIBITS

None .



1 I'm with the law firm of Brown, Hay & Stephens. Our  
2 address is 205 South Fifth Street, Suite 700,  
3 Springfield, Illinois 62701. My phone number is  
4 (217)544-8491, and e-mail address is  
5 cdavis@bhslaw.com.

6 JUDGE TAPIA: Thank you Mr. Davis.

7 No one else is here to enter an  
8 appearance.

9 Prior to going on the record, I asked  
10 the parties if they were ready to proceed to the  
11 evidentiary hearing, and Mr. Davis who is the  
12 attorney for the respondent has a concern, and I  
13 would go ahead and allow him on the record to state  
14 what his position is.

15 MR. DAVIS: Thank you, Your Honor.

16 As a brief synopsis of the history, in  
17 I believe late October or early November, AmerenIP  
18 filed amended testimony and an amended answer to the  
19 complaint, and we filed a motion for leave to have  
20 the ability to have that entered on the record.

21 A timeline was then set out by the  
22 court, and eventually the motion was granted, so the

1 amended testimony and amended answer was entered on  
2 record.

3 At that point, Ms. Johnson was given  
4 the opportunity to file amended rebuttal testimony  
5 within a certain period of time, and then she did  
6 file the rebuttal testimony on a date which I do not  
7 have in front of me. I believe it was November 17th,  
8 but it was before the deadline.

9 I'm kind of confused where to go from  
10 here because the amended rebuttal testimony does not  
11 really contain any testimony. It does make reference  
12 to a previous testimony, but it does seek to amend  
13 her original complaint. Paragraphs 1 and 2 ask that  
14 new damages be added to her prayer for relief, and  
15 then later in the same document, additional requests  
16 are made, and the amount in controversy is increased.

17 This appears to be kind of a combo  
18 testimony and amended complaint. I just think that  
19 if this is what Ms. Johnson desires to do, and I  
20 understand she's not a lawyer and isn't familiar with  
21 the process, that I would ask that this filing that  
22 she made on the 17th be stricken from the record, and

1 if she would like additional time to file rebuttal  
2 testimony, I would not object, and if she would like  
3 to file a motion for leave to file an amended  
4 complaint, that's certainly within her discretion  
5 also, but I wanted to get direction from the court on  
6 how to go forward.

7 JUDGE TAPIA: Ms. Johnson, your position?

8 MS. JOHNSON: Well, any additional damages are  
9 only damages that accumulated during these  
10 proceedings, and I went over that with the previous  
11 counsel, and it's just that I don't have the  
12 resources and different things to repeat all of the  
13 procedures and filings that we've already done  
14 because they've changed attorneys, and as far as the  
15 damages, they're aware of those. Those are the ones  
16 that accumulated during these proceedings.

17 JUDGE TAPIA: Ms. Johnson, an attempt to add  
18 damages in your rebuttal testimony is inappropriate  
19 and it's basically ignored. You have to properly  
20 amend your complaint, and you didn't do so.

21 The issue here is that the rebuttal  
22 testimony didn't include any rebuttal evidence.

1                   My question to you is do you want an  
2     opportunity to -- because, you know, opposing counsel  
3     is not objecting to you revising your rebuttal  
4     testimony. Do you want another opportunity to revise  
5     your rebuttal testimony? That's my question.

6           MS. JOHNSON: Well, at this time, the only  
7     thing I would do is resubmit the exhibits that I've  
8     submitted prior to.

9                   So, no, whatever has been submitted,  
10    that's it.

11          JUDGE TAPIA: Okay. Now, you keep referring to  
12    counsel. Now, you're representing yourself in this  
13    case.

14          MS. JOHNSON: Uh-huh, yes.

15          JUDGE TAPIA: And so basically, and I know it's  
16    costly, but litigation costs money unfortunately, but  
17    that's how it is. I mean, that's how it goes if you  
18    represent yourself, okay?

19                   So let me ask you on the record, the  
20    testimony or actually the rebuttal testimony that you  
21    submitted you want to submit as is?

22          MS. JOHNSON: Yes, I do.



1 JUDGE TAPIA: Okay. So now let me ask the  
2 parties, are you ready to proceed to the evidentiary  
3 hearing? Ms. Johnson?

4 MS. JOHNSON: Yes, I am.

5 JUDGE TAPIA: Mr. Davis?

6 MR. DAVIS: I'd be comfortable scheduling an  
7 evidentiary hearing at this time.

8 If anything else arises and she seeks  
9 to add officially any of these damages to the  
10 complaint, then I would like the opportunity to file  
11 a motion to strike or necessary motions, but yes,  
12 other than that, I would be ready.

13 JUDGE TAPIA: Okay. I will state for the  
14 record that, Ms. Johnson, your additional allegations  
15 or complaints or damages is inappropriate in rebuttal  
16 testimony, and basically, it's not being considered  
17 since your complaint was not actually revised.

18 Do you understand that?

19 MS. JOHNSON: Well, no, not really, but that's  
20 okay.

21 JUDGE TAPIA: No. What don't you understand,  
22 Ms. Johnson?

1 MS. JOHNSON: Uh, well...

2 JUDGE TAPIA: If you need to amend your  
3 complaint, then you need to amend your complaint, but  
4 adding additional allegations to rebuttal testimony  
5 is inappropriate for rebuttal testimony.

6 Rebuttal testimony is you rebut the  
7 evidence that the opposing counsel has presented in  
8 his testimony.

9 So let me ask you again, is your  
10 rebuttal testimony that you submitted the one that  
11 you would like to be entered into this case?

12 MS. JOHNSON: Yes.

13 JUDGE TAPIA: Okay. So we need to decide on an  
14 evidentiary date, and we're going to go off the  
15 record so we can all discuss this.

16 (Whereupon an off-the-record  
17 discussion transpired at this  
18 time.)

19 JUDGE TAPIA: We just got back on the record,  
20 and we discussed dates for an evidentiary hearing.  
21 The parties are ready to proceed.

22 The evidentiary hearing will be

1 February 9th or February 10th at 11 a.m. Mr. Davis,  
2 the attorney for the respondent, will confirm this  
3 week, and I will send out notice to both parties  
4 indicating which date the evidentiary hearing will  
5 commence.

6                   The evidentiary hearing will be an  
7 opportunity for the complainant -- Ms. Johnson,  
8 you'll have an opportunity to make an opening  
9 statement. At that time, you have to set forth the  
10 relief you're requesting and a short description of  
11 the evidence to be admitted into the record.

12                   I want you to be prepared to describe  
13 each exhibit. You need to bring each exhibit, and I  
14 want it marked as, for example, Complainant Exhibit  
15 A, Complainant Exhibit B and so forth. I want all  
16 original exhibits to be admitted into the record at  
17 the hearing. The court reporter will then mark it.

18                   Also state when the exhibit was filed  
19 on e-docket, and you can get that information by  
20 going onto the e-docket system and seeing when that  
21 exhibit was admitted, or actually not admitted, filed  
22 into e-docket.

1 MS. JOHNSON: Yes.

2 JUDGE TAPIA: At that time, once that's been  
3 done, you'll have the opportunity to enter your  
4 prefiled testimony into the record. You'll have an  
5 opportunity to make any changes, if any. If not,  
6 we'll go ahead and enter that testimony into the  
7 record.

8 You don't have any witnesses, so then  
9 you will make yourself available for  
10 cross-examination for the opposing party.

11 At that time, the respondent will have  
12 the same opportunity, opening statement, the  
13 exhibits, all the original exhibits marked ready to  
14 go. If it's proprietary or confidential, please  
15 indicate that so that the court reporter will know  
16 and they will mark it.

17 At that time, after he's presented his  
18 witnesses to testify, you will have an opportunity to  
19 cross-examine his witnesses, Ms. Johnson.

20 MS. JOHNSON: Yes.

21 JUDGE TAPIA: Okay. At the close of the  
22 evidentiary hearing and all of the prefiled testimony

1 has been entered into the record, the witnesses have  
2 testified and all the exhibits have been entered into  
3 the record or into evidence, I will mark the case  
4 heard and taken. I'll close the case.

5 I will then subsequently write a  
6 proposed order, and I'll send it out to the parties.

7 On the proposed order, there will be a  
8 date for a brief on exceptions and reply briefs in  
9 response to the proposed order.

10 They will have -- I want to make this  
11 very, very clear because I believe there has been an  
12 abuse of missing deadlines in this case.

13 The dates on the proposed order are  
14 going to be strictly enforced. One day late I'm not  
15 even going to look at it. So please make sure that  
16 you send it prior to if you have brief on exceptions  
17 or reply brief.

18 Okay. Any questions, Ms. Johnson?

19 MS. JOHNSON: No.

20 JUDGE TAPIA: You understand the process,  
21 Ms. Johnson?

22 MS. JOHNSON: Yes, yes.

1 JUDGE TAPIA: Okay. Mr. Davis?

2 MR. DAVIS: No questions.

3 JUDGE TAPIA: Then we'll go ahead and continue  
4 this matter until February. I will again set the  
5 evidentiary hearing today or tomorrow, and then it  
6 will be continued to that date at 11 a.m.

7 Thank you very much.

8 (Whereupon the hearing was  
9 continued to February 9 or 10,  
10 2010 (definitive date to be  
11 decided later) at 11:00 a.m.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22